IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6946 of 2007
With
CRIMINAL MISC.APPLICATION No. 6947 of 2007
With
CRIMINAL MISC.APPLICATION No. 6948 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SIRAJ AZMAT CHAUDHRY & 6 - Applicant(s)
Versus
STATE OF GUJART & 1 - Respondent(s)

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Appearance :
NANAVATI & NANAVATI for Applicant(s) : 1 - 7.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/09/2007

COMMON ORAL JUDGMENT

1. As common question of law and facts arise in this group of applications and as they are

arising out of one criminal case, they are being disposed of by this common judgment and order.

2. Criminal Misc. Application No.6946 of 2007 is filed by the applicants – original accused Nos.4 to 7 and 10 to 12 of criminal case No. 9717 of 2007 under section 482 of the Criminal Procedure Code to quash and set aside the criminal case No.9717 of 2007 pending in the Court of learned JMFC, Court No.5, Ahmedabad (Rural), qua the applicants.

Criminal Misc. Application No.6947 of 2007 is filed by the applicants – original accused Nos. 13 to 15 of the aforesaid criminal case No.9717 of 2007 to quash and set aside the criminal proceedings being criminal case No. 9717 of 2007 pending in the Court of learned JMFC, Court No.5, Ahmedabad (Rural).

Criminal Misc. Application No.6948 of 2007 is filed by the applicants – original accused No.3

to quash and set aside the criminal proceedings being criminal case No. 9717 of 2007 pending in the Court of learned JMFC, Court No.5, Ahmedabad (Rural).

3. Respondent No.2 herein – original complainant has filed criminal case No. 9717 of 2007 on 5.5.2007 in the Court of learned JMFC, Court No.5, Ahmedabad (Rural) against the respective applicants with other persons alleging that the applicants and others have committed offence under section 7(i) and 7(v) of the Prevention of Food Adulteration Act; 1954 (hereinafter referred to as “the Act” for short) punishable under section 16 of the Act alleging inter alia that upon analysis of sample taken from one Shri Banvari Sitaram Tank – original accused No.1 – vendor by Public Analyst at Vadodara, it was found that in the Nature Fresh Purita Refined Imported Palmoline Oil (Company Pack) the contents of Acid value was more than permitted limit and therefore, it was adulterated as defined under section 2(ia)(m) of the Act. It

appears that the said complaint has been filed by the respondent No.2 – original complainant upon sanction from the Assistant Commissioner and Local Health Authority, Food & Drug Controlling Department, Ahmedabad Circle, Ahmedabad and the letter of sanction was dated 24.4.2007. That the learned JMFC, Ahmedabad (Rural) issued the process / summons against the applicants – original accused Nos. 3 to 7 and 10 to 15, the applicants have preferred present applications under section 482 of the Criminal Procedure Code to quash and set aside the criminal case No. 9717 of 2007 as well as the order passed by the learned JMFC issuing the summons upon the applicants in the said complaint.

4. Shri S.I.Nanavati, learned Senior Advocate appearing on behalf of the respective applicants has vehemently submitted that the learned JMFC has materially erred in issuing summons / process upon the applicants in view of the nominations given of two other persons holding

responsibility for the contravention of any of the provisions under the Act and therefore, no criminal responsibility / liability can be fasten upon the applicants. It is also further submitted that the date on which the sample was taken is 6.12.2006 and all the applicants of Criminal Misc. Application No.6946 of 2007 were never the Directors of the respective companies at the relevant time i.e. at the time when the sample was taken and even on the date on which the complaint was filed. Shri S.N.Shelat, learned Senior Advocate has submitted that so far as applicants of Criminal Misc. Application No.6947 of 2007 i.e. original accused Nos.13 to 15 are concerned, they were never the Directors of the company i.e. M/s. Global Oil & Fats Limited at any point of time and they had only agreed to take some shares in the year 2003 as subscribers and therefore, their names were shown in the Memorandum & Articles of Association of M/s. Global Oil & Fats Limited. It is also further submitted that even otherwise, the company had nominated one Shri

Sandeep Nalawade under section 17 of the Act. It is also further submitted by him that so far as applicant of Criminal Misc. Application No.6948 of 2007 is concerned, though at the relevant time, he was the Director of M/s. Cargil India Private Limited, however, in view of the nomination of one Shri Srinivas V. Angara under section 17 of the Act, there could not be any prosecution against him in absence of any further allegations against him that he was in day today affairs and management of the company and the alleged offence was in knowledge and connivance of the said Director. It is also further submitted by Shri Nanavati, learned Senior Advocate that the respective applicants were never managing the affairs of the company at the relevant point of time and there was no consent or connivance by the applicants and even there are no allegations in the complaint against the respective applicants that the alleged offence has been committed with the consent or connivance and/or knowledge of the applicants and therefore, initiation of

prosecution and issuance of process / summons against the applicants based on the principle of vicarious liability would not arise and therefore, the same requires to be quashed and set aside. Shri Nanavati, learned Senior Advocate has relied upon the decision of the Hon'ble Supreme Court in case of ***R. Banerjee & Others V/s. H.D.Dubey & Others*** reported in **1992(2) SCC 552.** Shri Nanavati, learned Senior Advocate has relied upon the nominations of the respective companies i.e. M/s. Global Oil & Fats Limited and M/s. Cargil India Private Limited dated 19th July, 2006 made under section 17 of the Act and has submitted that so far as the company - M/s. Global Oil & Fats Limited is concerned, the company has nominated one Shri Sandeep Nalawade for the conduct and business of the company and so far as the company - M/s. Cargil India Private Limited is concerned, the company has nominated one Shri Srinivas V. Angara, Manager (Quality) for the nomination dated 19th July, 2006 as required under section 17 of the Act and such nominations were prior to

the date of taking of sample and therefore, as held by the Hon'ble Supreme Court, more particularly, in absence of any further averments against the respective Directors, there can be prosecution only against the nominated persons and therefore, it is requested to allow all the applications and to quash and set aside the impugned complaint qua the applicants. He has submitted that as it appears that in the complaint the nominated persons are not joined as accused persons and therefore, he has no objection, if those nominated persons are joined as accused persons in the aforesaid complaint and they can be tried for the alleged offence.

5. All these applications are opposed by Shri K.T.Dave, learned APP appearing on behalf of the respondents. Affidavit in reply is filed on behalf of the respondent No.2 in each of the applications. It is submitted that the impugned complaint has been filed after getting necessary sanction from the department and after observing

due procedure of law as prescribed in the Food Adulteration Act and the Rules. It is submitted that the sample was sent for analysis to the Public Analyst, Vadodara and after receiving the report of the Public Analyst and after following due procedure, the impugned complaint has been filed having satisfied with regard to the adulteration. It is further submitted by him that M/s. Cargil India Private Limited was the marketing company and M/s. Global Oil & Fats Limited was found to be the manufacturer company and the notices were sent to both the companies before filing the complaint in question. It is further submitted that as the respective companies did not furnish the requisite information / particulars of the firm, the complainant was constrained to write the letter dated 16th March, 2007 to the Office of the Assistant Commissioner of Local Health Authority, Bhuj for furnishing the particulars of the aforesaid firm and after receiving the necessary particulars from the Local Health Authority, Ahmedabad & Bhuj, the impugned

complaint has been filed against the accused persons. It is submitted that when the impugned complaint has been filed before the learned JMFC after following due procedure as required under the provisions of the Act and the Rules and when the learned JMFC has issued the process against the applicants, the same is not required to be interfered with by this Court in exercise of the powers under section 482 of the Criminal Procedure Code. Under the circumstances, it is requested to dismiss the present applications.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. At the outset, it is required to be noted that M/s. Cargil India Private Limited is the marketing company and M/s. Global Oil & Fats Limited is found to be the manufacturer company of the product / sample in question. The impugned complaint has been filed against the accused Nos.3 to 7 as Directors of M/s. Cargil

India Private Limited and accused No.1 as vendor and accused No.2 as marketing company. The impugned complaint is filed against the accused Nos. 9 to 16 as Directors and responsible persons of manufacturer company – M/s. Global Oil & Fats Limited and accused No.8 is the manufacturer company – M/s. Global Oil & Fats Limited. The allegations against the respective accused are for breach of section 7(i) and 7(v) of the Act punishable under section 16 of the Act. It also borne out from the record, more particularly, pages – 38 and 39 that applications dated 19th July, 2006 were submitted by both the companies i.e. M/s. Global Oil & Fats Limited and M/s. Cargil India Private Limited submitted to the Assistant Commissioner, Local Health Authority, Bhuj as required under section 17 of the Act and one Shri Sandeep Nalawade has nominated for the conduct and the business of M/s. Global Oil & Fats Limited and one Shri Srinivas V. Angara, Manager (Quality), has been nominated under section 17 of the Act for the conduct and business of M/s. Cargil

India Private Limited. It is the case on behalf of the accused Nos.4 to 12 that at the relevant time even when the sample in question was taken i.e. on 6.12.2006 they were not the Directors of the respective companies and they retired as Directors much before the date of taking of sample. It is also the case on behalf of the accused No.13 to 15 that at no point of time they were the Directors of M/s. Global Oil & Fats Limited and as they were subscribers and agreed to take some shares in the year 2003, their names were shown in the Memorandum & Articles of Association of M/s. Global Oil & Fats Limited. It is also there case that even at the relevant time when they were the Directors, they were neither in day today affairs and/or management of the respective companies. It is also their case that even there are no allegations or averments in the complaint against the respective Directors – applicants herein to the effect that they were in day today affairs and management of the respective companies and/or the alleged offence has been

committed with their consent or connivance. This Court has gone through the impugned complaint and on bare reading of the complaint, there are no allegations in the complaint regarding consent or connivance of the respective applicants. It is not disputed by the respondent, more particularly, respondent No.2 – original complainant that there was no nomination under section 17 of the Act vide nomination dated 19th July, 2007.

8. As held by the Hon'ble Supreme Court in case of ***R. Banerjee*** (supra), where a company has committed an offence under the Prevention of Food Adulteration Act, the person nominated under sub-section (2) of section 17 to be in charge of and responsible to the company for the conduct of its business shall be proceeded against unless it is shown that the offence was committed with the consent / connivance / negligence of any other Director, Manager, Secretary or Officer of the company in which case the said person can also be proceeded

against and punished for the commission of the said offence. It is also held by the Hon'ble Supreme Court that it is only where no person has been nominated under sub-section (2) of section 17 that every person, who at the time of the commission of the offence was in charge of and was responsible to the company for the conduct of its business can be proceeded against and punished under the law. It is also held by the Hon'ble Supreme Court that if the company succeeds in showing that it had made valid nomination and had duly intimated the concerned Local (Health) Authority about the same as required under sub-section (2) of section 17 before commission of the alleged offence, the case would fall within the ambit of sub-section (i) of clause (a) of subsection (1) of section 17 of the Act and not under sub-clause (ii) thereof and it would then be necessary for the prosecuting agency to show from the averments made in the complaint that the case falls within sub-section (4) of section 17 of the Act. If the prosecuting agency fails to show that the

offence was committed with the consent or connivance of any particular Director, Manager, Secretary or other officer of the company or on account of the negligence of any one or more of them, the case set up against the Director, Manager, etc, cannot be allowed to proceed.

9. In the present case, there are no allegations in the complaint that the offence has been committed with the consent / connivance / negligence of the Directors i.e. applicants herein other than the nominated person. And therefore, the allegation in the complaint do not make out a case under subsection (4) of section 17 of the Act. That being so, the inclusion of the applicants herein as co-accused other than the company and the nominated person as the applicants liable to be proceeded against and punished cannot be justified and in that view of the matter, the criminal proceedings by way of aforesaid criminal complaint against the applicants herein cannot be sustained and justified and therefore, the same requires to be

quashed and set aside and even the process issued by the learned trial Court against the applicants in the aforesaid complaint also requires to be quashed and set aside. Under the circumstances, on this ground alone, without further entering into any other question and/or controversy as to whether the respective applicants were the Directors at the relevant point of time or not and/or whether they were at all the Directors of the company or not, the impugned complaint requires to be quashed and set aside in absence of any allegations in the complaint regarding consent or connivance of the applicants.

10. For the reasons stated above, all the applications succeed. The impugned complaint being criminal case No.9717 of 2007 pending in the Court of learned JMFC, Court No.5, Ahmedabad (Rural) and the process issued by the learned trial Court in the said complaint against the respective applicants is hereby quashed and set aside qua the applicants i.e. original accused

Nos. 3 to 7 and 10 to 15 only. As agreed by Shri S.I.Nanavati, learned Senior Advocate appearing on behalf of the respective companies i.e. M/s. Cargil India Private Limited & M/s. Global Oil & Fats Limited the nominated persons nominated under section 17 of the Act i.e. Shri Sandeep Nalawade nominated for the conduct and business of M/s. Global Oil & Fats Limited and Shri Srinivas V. Angara, Manager (Quality), nominated for the conduct and business of M/s. Cargil India Private Limited be joined as accused persons in the aforesaid complaint and they may be tried for the offence alleged in the said complaint for and on behalf of the respective companies and for that purpose the respondent No.2 to submit an appropriate application / applications before the learned trial Court in the aforesaid criminal case No. 9717 of 2007 and as and when such an application / applications are submitted, the learned trial Court is directed to allow the said application/s and join aforesaid two nominated persons as accused in the said complaint and they may be tried

accordingly. Rule is made absolute accordingly in each of the application to the aforesaid extent.

[M.R.Shah, J.]

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